

# PATENT COOPERATION TREATY

MH 16/06/04

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PCT

## WRITTEN OPINION (PCT Rule 66)

From the  
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:

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20 JAN 2004

Date of mailing  
(day/month/year) 16.03.2004

Applicant's or agent's file reference  
MHP89166PWO

**REPLY DUE** within 3 month(s)  
from the above date of mailing

International application No.  
PCTGB 03/03145

International filing date (day/month/year)  
21.07.2003

Priority date (day/month/year)  
20.07.2002

International Patent Classification (IPC) or both national classification and IPC  
G01N21/53

Applicant  
COUNCIL FOR THE CENTRAL LABORATORY OF THE...et al.

**RECEIVED**

18 MAR 2004

**M.O.**

1. This written opinion is the **first** drawn up by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:
  - I ☒ Basis of the opinion
  - II ☐ Priority
  - III ☒ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
  - IV ☐ Lack of unity of invention
  - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
  - VI ☐ Certain documents cited
  - VII ☐ Certain defects in the international application
  - VIII ☐ Certain observations on the international application
3. The applicant is hereby **invited to reply** to this opinion.
 

**When?** See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(d).

**How?** By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

**Also:** For an additional opportunity to submit amendments, see Rule 66.4.  
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis.  
For an informal communication with the examiner, see Rule 66.6.

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.
4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 20.11.2004

Name and mailing address of the international preliminary examining authority:



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**I. Basis of the opinion**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

**Description, Pages**

1-9 as originally filed

**Claims, Numbers**

1-20 as originally filed

**Drawings, Sheets**

1/2-2/2 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

5. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

6. Additional observations, if necessary:

**III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been and will not be examined in respect of:

☐ the entire international application,

☒ claims Nos. 20

because:

☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (specify):

☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 20 are so unclear that no meaningful opinion could be formed (*specify*):

**see separate sheet**

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

☐ no international search report has been established for the said claims Nos.

2. A written opinion cannot be drawn due to the failure of the nucleotide and/or amino acid sequence listing to comply with the Standard provided for in Annex C of the Administrative Instructions:

☐ the written form has not been furnished or does not comply with the Standard.

☐ the computer readable form has not been furnished or does not comply with the Standard.

**V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. Statement**

Novelty (N)	Claims	1,7,14
Inventive step (IS)	Claims	
Industrial applicability (IA)	Claims	

**2. Citations and explanations**

**see separate sheet**

**Re Item III**

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

In claim 20 the attempt is made to define the claimed subject-matter by a reference to the drawings. It is not clear which combination of technical features shall be thereby implied (Rule 6.2(a) PCT; PCT-Guidelines Section IV, III-4.10).

**Re Item V**

Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

Reference is made to the following document:

D1: GB-A-2212261

**1. Independent apparatus claim 1**

The term "light selection means" used in claim 1 has no well-defined, generally accepted meaning. It is therefore unclear as are the passages "being arranged to selectively allow light ... to pass to the detector", because it is not specified how or with respect to which parameter a selection is performed.

Document D1 describes an optical water contaminant meter comprising:

- a sample holding means (cf. figure 1, ref. sign 11) arranged to receive light from a light source (14);

- a detector (22);

- first light selection means (16,18) arranged to selectively allow light of a predetermined first wavelength passing from the sample holding means in a direction substantially parallel to the direction of the incident light to pass to the detector (cf. page 2, first para.); and

- second light selection means (17,19) arranged to selectively allow light of a predetermined second wavelength passing from the sample holding means in a direction substantially transverse to the direction of the incident light to pass to the detector (cf. page 2, first para.).

Thus, D1 anticipates the apparatus according to claim 1 (Art. 33(2) PCT).

## 2. Dependent claims

The additional technical features of claims 7 and 14 are known from D1 (page 3, paragraphs 3 and 4).

Claim 12 is unclear (Art. 6 PCT) because "the first position" and "the second position" lack antecedence. Even if "the" was replaced by "a" the claim would still be unclear, because the effects of the first and second positions of the shutter and the light guides shutters are not specified.

## Further remarks

### 1. Claims

- 1a. Independent claim 1 should be recast in the two-part form in accordance with Rule 6.3(b) PCT, with those features known in combination from the prior art (document D1, see Item V above) being placed in the preamble (Rule 6.3(b)(i) PCT) and with the remaining features being included in the characterising part (Rule 6.3(b)(ii) PCT).
- 1b. The features of the claims should be provided with reference signs placed in parentheses (Rule 6.2(b) PCT).
- 1c. Claim 5 should be dependent on claim 3 rather than claim 4 because claims 4 and 5 are directed to alternative configurations of the reflective shutter.

Claim 15 should be dependent on "claim 14 when dependent on claim 12" rather than on "claim 12 and claim 14".

### 2. Description

**WRITTEN OPINION  
SEPARATE SHEET**

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International application No. PCT/GB03/03145

- 2a. When filing amended claims, the applicant should at the same time bring the description into conformity with the amended claims (Rule 5.1(a)(iii) PCT).
- 2b. In order to meet the requirements of Rule 5.1(a)(ii) PCT, the document D1 should be identified in the description and the relevant background art disclosed therein should be briefly discussed.
- 2c. The following reference signs are mentioned in the description, but, contrary to Rule 11.13(l) PCT, do not appear in the drawings: 6a (page 6, second para.), 16 (page 7, last para.), 18a, 18b (page 8, second para.).

The applicant is requested to file amendments by way of replacement pages in the manner stipulated by Rule 66.8(a) PCT. In particular, fair copies of the amendments should be filed preferably in triplicate.

Moreover, the applicant's attention is drawn to the fact that, as a consequence of Rule 66.8(a) PCT the examiner is not permitted to carry out any amendments under the PCT procedure, however minor these may be.

In order to facilitate the examination of the conformity of the amended application with the requirements of Article 34(2)(b) PCT, the applicant is requested to clearly identify the amendments carried out, no matter whether they concern amendments by addition, replacement or deletion, and to indicate the passages of the application as filed on which these amendments are based (see also Rule 66.8(a) PCT).

If the applicant regards it as appropriate these indications could be submitted in handwritten form on a copy of the relevant parts of the application as filed.